

“FATHERS’ RIGHTS” AND THE DEFENSE OF PATERNAL AUTHORITY IN AUSTRALIA

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ABSTRACT

Feminism's achievements regarding violence against women are a key target for the father's rights movement. This article provides an overview of the impact of the fathers' rights movement on men's violence against women. It documents the ways in which fathers' rights groups in Australia have influenced changes in family law which privilege parental contact over safety, particularly through moves towards a presumption of children's joint residence. They have attempted to discredit female victims of violence, to wind back the legal protections available to victims and the sanctions imposed on perpetrators, and to undermine services for the victims of men's violence.

The fathers' rights movement in Australia is defined by the claim that fathers are deprived of their 'rights' and subjected to systematic discrimination as men and fathers, in a system biased towards women and dominated by feminists. Fathers' rights groups overlap with men's rights groups and both represent an organized backlash to feminism. Such groups have had some successes in shifting policy and perceptions in relation to fathers, families, and violence. This article presents an overview of the fathers' rights movement, the context for its emergence, and in particular, its impact on violence against women. It documents the ways in which anti-feminist fathers' groups in Australia have influenced shifts in family law which privilege fathers' contact with children over children's safety. It offers a critical assessment of these groups' efforts to discredit female and child victims of men's family violence and to undermine the legal and other protections available to them, noting similar trends in the USA and elsewhere.

OVERVIEW OF THE FATHERS' RIGHTS MOVEMENT IN AUSTRALIA

The worldview of fathers' rights groups is captured in an open letter to Prime Minister Howard from the Fatherhood Foundation in September 2003: 'For too long Aussie dads have been libeled by the media, vilified by feminists, and denied justice by our court system.' Responsibility and blame for these problems is attributed to women, the women's movements and feminism (Kaye & Tolmie, 1998a, pp. 62-65). Kaye and Tolmie's (1998b) analysis of fathers' rights groups remains an accurate account of their typical rhetorical devices: an appeal to formal equality, a language of rights and entitlement, claims to victim status, the conflation of children's and fathers' interests, a defense of 'the family', hostile depictions of women, and reconstructions of the notion of fatherhood. There is an overlap between men's rights groups, fathers' rights groups and non-custodial parents' groups where members are often fathers. These

groups sometimes have female members and even co-founders, including second wives and other family members of men who have had some engagement with family law (Kaye & Tolmie, 1998a, p. 22). Fathers' rights and men's rights groups in Australia include the Lone Fathers Association, the Men's Rights Agency, the Shared Parenting Council, and many others. They can be seen as the anti-feminist wing of the men's movement, the network of men's groups and organizations mobilized on gender issues (Flood, 1998).

The fathers' rights movement¹ has emerged in the context of profound shifts in gender, intimate and familial relations over the past four decades. Changing gender relations have shifted 'the landscape in which men and women meet' (Featherstone, 2003, p. 244). New arrangements of work and money have been accompanied by the rewriting of the sexual and emotional contracts between women and men. While some men are flourishing because of the opening up of gender roles generated by the women's movements, others are confused, troubled and angered by the uncertainties of contemporary gender relations. While it is an exaggeration to claim that men in general are in crisis, the most common form of contemporary crisis among heterosexual men occurs during and after separation and divorce. Painful experiences of divorce and separation, as well as experiences of family law, produce a steady stream of men who can be recruited into fathers' rights groups.

Fathers' rights organizations are a response also to shifts in the structure and meaning of family and parenting relations. Family structures and fertility patterns in Australia have been transformed (Weston et al., 2001), leading to a growing diversity of relationships between adult men and children. More men are living separately from their biological children, fathering outside of marriage, having parenting relationships with children who are not biologically theirs, being custodial single fathers (Sullivan, 2001, p. 47), and parenting children in gay male

relationships. The last three decades have witnessed important challenges to the economic, legal, moral and biological conditions of fatherhood and the forms of masculinity with which they are interrelated (Williams, 1998, p. 67).

Cultural definitions of fatherhood also have changed. The notion of the nurturing father, highly involved with his children and sharing the parenting with his female partner, now exerts a powerful influence on popular perceptions. However, the culture of fatherhood has changed much faster than the conduct, and traditional divisions of labor persist in both parenting and domestic work in Australia (Weston et al., 2002, pp. 18-19). While the ideal of men and women sharing parenting is widely accepted, in couple-headed families fathers spend far less time than mothers engaged in child care or being with children (Craig, 2003). There has been virtually no change in the gender division of child care in couple households over 1986 to 1997 (Baxter, 2002, pp. 409-410). The gender gap in household labor has gotten smaller, but only because women are doing less and not because men are doing more (Baxter, p. 399). Nevertheless, many men aspire to do more fathering than they actually perform (Russell et al., 1999, pp. 4-8).

The state of contemporary fatherhood is ‘both better than ever and worse than ever’ (Doherty, 1997, p. 218). There is a rise in the numbers of fathers interested in playing an active role *and* a rise in those who are disengaging or being pushed away from paternal responsibilities (Emig & Greene, 1998, p. 4). On the one hand, fatherhood is enjoying the best of times among families with positive parental relationships and stable, committed father-child bonds and among post-divorce families with residential fathers or positive involvement by non-residential fathers. On the other, ‘more children do not live with their fathers, relate to their fathers on a regular basis, or enjoy the economic support of their fathers’ (Doherty, p. 221). Following divorce, most

non-resident fathers in Australia move into a distant relationship with their children, their involvement generally dropping off with time after separation (Parkinson & Smyth, 2003). Large numbers of non-resident fathers do not provide adequate economic support for their children after a divorce (Wolffs & Shallcross, 2000, p. 29). Most pay little child support or none at all, but this is because they are poor, although resident mothers are even poorer (Silvey & Birrell, 2004).

The men in the fathers' rights movement usually have been divorced or separated, and many have gone through deeply painful marriage breakups and custody battles. These are the experiences that bring most men to the fathers' rights movement. American research suggests that many men join in search of help with their own child support and custody issues and emotional support in response to isolation and grief (Crowley, 2006). Traditional constructions of masculinity, centered on stoicism and emotional inexpressiveness, leave men ill-equipped to deal with the aftermath of separation and divorce. Australian and American research finds that men who have undergone divorce and separation feel acute distress at and soon after the time of separation, and some experience long-term impairment of their psychological well-being (Jordan, 1998; Lehr & MacMillan, 2001).

Fathers' rights groups are characterized by anger and blame directed at ex-partners and the 'system' that has deprived men or fathers of their 'rights', and such themes are relatively common among men who have undergone separation and divorce. Australian research suggests that significant proportions of men feel angry at their ex-wives, this anger lasts for years, and blaming of their ex-partners intensifies over time (Jordan, pp. 22-23). Perceptions that the legal system is biased and discriminatory are common among non-resident fathers, according to several US studies (Braver & Griffin, 2000; Laakso & Adams, 2006; Lehr & MacMillan).

A related source of entry into fathers' rights groups is separated men's dissatisfaction with loss of contact with their children. In Australia most children's living arrangements are established at the point of parental separation, finalized without the need for a Family Court order and do not change afterwards (Smyth et al., 2001). At the same time, there is significant dissatisfaction among post-separation parents about their levels of residence and contact, particularly among non-resident fathers. After separation and divorce, 36% of separated fathers have no face-to-face contact with their children (Parkinson & Smyth, 2003), and a 2001 study found that 40% of resident mothers, but 75% of non-resident fathers, would like to see more contact occurring (AIFS, 2003, p. 8).

Fathers' rights groups have become vocal opponents of feminist perspectives on interpersonal violence. They are well-organized advocates for changes in family law and other areas of policy that would undermine feminist and other achievements in these areas and impact on the victims and perpetrators of violence.

FEMINIST ACHIEVEMENTS

In Australia as in other countries, feminist activism made men's violence against women a public issue and a social policy concern (Phillips, 2006, p. 200). Beginning in the early 1970s, feminist efforts have led to progress in legislation, the creation of domestic violence units within police forces and other institutions, government funding for refuges, counseling, community education, and rehabilitation, and national government agendas on violence against women (Laing, 2000).

In the remainder of this article, I document the impact of fathers' rights groups on four interrelated areas of feminist efforts regarding violence against women. The first concerns

general processes of family law. Feminist advocates and organisations have sought to ensure that laws and legal decision-making regarding divorce, separation, and the care of children give proper weight to the need to protect women, and children, from physical and sexual violence, with at least some success. In the early 1990s, feminist activists in the National Committee on Violence Against Women and in women's groups such as the National Women's Justice Coalition pointed to the silence regarding domestic and family violence in existing family law provisions, and they were instrumental in securing greater acknowledgement of such violence in the 1995 *Family Law Reform Act* (Behrens, 1996). In particular, they were successful in having violence recognized as a relevant issue in the determination of children's matters after separation (Armstrong, 2001). At the same time, their gains were only partial, and limited by other changes, as I discuss in further detail below.

The second area concerns perceptions of women and children experiencing or reporting violence. One of the earliest forms of feminist activism addressing violence against women in Australia was the provision of direct support for women escaping violence, through refuges, crisis telephone lines, and other measures. Feminist women established the first Australian women's refuge in 1974 in Sydney, and went on to develop a national network of refuges. Refuges have received stable, albeit inadequate, state government funding since 1985, and there are now 300 or so refuges around the country (Laing, pp. 2-3; Murray, 2005, p. 29), although there remains a significant shortfall in places for women and children fleeing violence. More generally, feminist advocates have worked to ensure that women and children who allege violence or abuse are taken seriously and their allegations are given due weight in legal and extra-legal processes.

The third area of feminist achievement addressed by the fathers' rights movement concerns legal and institutional responses to the victims and perpetrators of men's violence against women. Feminist and violence-focused groups and organizations have devoted enormous energies to altering police and judicial reactions to incidents of domestic violence (Putt & Higgins, 1997, p. xi). In particular, they have worked to criminalize violent behaviour, impose sanctions on its perpetrators, and establish legal and other protections for victims. In the first wave of reform in the 1980s, women's groups and feminist advocates within government bureaucracies were successful in securing legal changes throughout Australia's states which made violence in the home a criminal offence, expanded police powers to enter premises in response to complaints of domestic violence, and encouraged arrest for such offences, as well as providing protection from future violence for victims through the creation of quasi-criminal protection or restraining orders (Laing, p. 4). In subsequent waves of reform, there were further changes regarding police practice and powers, penalties for breaches of protection orders, the criminalization of rape in marriage, rules of evidence regarding corroboration and sexual history in relation to incidents of sexual assault, recognition of stalking, inter-agency cooperation, and other issues (Laing, p. 4; Putt & Higgins, pp. xi-5).

The fourth area concerns the wider climate which allows violence against women to flourish. Feminist movements have sought to undermine cultural and institutional supports for violence against women through policy, community education, and advocacy. Women's movements in Australia have had a distinctively high level of direct involvement in government policy-making, with feminist bureaucrats or 'femocrats' playing key roles in the 1980s and early 1990s in the development and implementation of state and national policy on gender equality (Phillips, p. 202). In addition, 'The coming to power in the 1980s of state and federal Labor

governments with explicit commitments to equality and social justice facilitated a climate of action.’ (Weeks & Gilmore, 1996, p. 143) Collaborations and overlaps between ‘femocrats’ and grassroots feminists have helped to generate government support for policies addressing violence against women. This began with state government reports and blueprints, and expanded with the increasing involvement of the national or ‘federal’ government in the late 1980s (Laing, p. 4). Efforts by feminist advocates and organisations have informed initiatives by successive federal governments in Australia to develop national strategies to address violence against women, fund the collection of national data through surveys in 1996 and 2006, and develop social marketing campaigns to undermine community tolerance for domestic violence. Government-funded public awareness campaigns regarding domestic violence began in Australia on a small scale in the early 1980s, and the first national education campaign commenced in 1987 (Laing, pp. 4-5; Putt & Higgins, p. 4).

What impact then have fathers’ rights groups had on these aspects of violence against women?

IMPACT OF THE FATHERS’ RIGHTS MOVEMENT

Privileging contact over safety

The most immediate way in which the fathers’ rights movement has influenced violence against women is in its impact on family law. Substantial changes in Australian family law were made in 1995 with the passing of the *Family Law Reform Act*. These changes, particularly the enshrining of children’s right to contact with both parents, were influenced by the lobbying of fathers’ rights groups (Rhoades et al., 2002, p. 20).

The 1995 reforms were intended to bring about a normative shift towards ‘shared parenting’, and included the guiding principle that ‘children have a right of contact, on a regular basis, with both their parents’ (Rhoades et al., 2002, p. 64). The *Reform Act* also included various changes focused on protecting children and their parents from domestic violence. However, since the 1995 changes there has been no increase in shared parenting among separated partners (Rhoades et al. p. 1). Parents who do enter into workable and flexible shared residence arrangements after separation are doing so without legal assistance and without any knowledge of the *Family Law Reform Act*. On the other hand, the reforms have increased the frequency of joint residence orders in the context of distrust, hostility and violence between ex-partners, raised many men’s expectations that they now have an automatic ‘right’ to shared parenting, created greater scope for abusive non-resident parents to harass or interfere in the life of the child’s primary caregiver, and increased the number of disputes about contact (Rhoades et al.).

An uncritical assumption that children’s contact with both parents is necessary pervades the courts and the media. Among legal practitioners a *de facto* ‘presumption’ in favor of contact with the non-resident parent is widespread, although the legislation makes it clear that children’s ‘right’ to contact with both parents only operates to the extent that such contact is found to be in the child’s best interests (Rhoades et al., p. 6). The evidence is that the ‘right to contact’ aim of the 1995 reforms is overriding the ‘safety from violence’ aim, and this is clearest in the Family Court’s approach to contact when allegations of domestic violence are raised (Rhoades et al., pp. 73-74). The Court now is more likely to make interim orders for children’s unsupervised contact in cases involving domestic violence or child abuse, to use hand-over arrangements rather than suspend contact until trial, and to make orders for joint residence where

there is a high level of conflict between the separated parents and one parent strongly objects to shared residence.

Even when there are histories of domestic violence, most resident mothers initially are supportive of contact between the former partner and their children. Yet they rarely are able to secure the 'safe' arrangements such as supervised contact that they seek (Rhoades et al., pp. 71-73). In addition, there has been a large increase in the numbers of contravention applications by non-resident parents alleging breaches of contact orders, and many are being pursued as a way of harassing the resident parent rather than a genuine grievance about missed contact (Rhoades et al., pp. 6-9). Similar trends are evident in England and Sweden (Eriksson & Hester, 2001; Featherstone & Peckover, 2007).

Three Australian studies document the harms visited on both women and children by these legal changes. Of 40 women negotiating child residence and contact arrangements with ex-partners who had been violent towards them, 13 children had been the targets of physical violence by their fathers. In half these cases, fathers had unsupervised contact with the children, and fathers had residence in four cases (Kaye et al., 2003, p. x). In 25 cases children had witnessed violence against their mother and fathers had been granted unsupervised contact with children in 17 of these cases and residence in four. Children witnessed high levels of violence during contact and contact changeover. In another study, nine of eleven abused children were forced to have contact with the abusive parent, despite their pleas to have no further contact (Hay, 2003). Finally, drawing on a random sample of 40 files involving children's matters over 1999-2000, Kaspiew (2005) documented that the Family Court regularly grants fathers contact with their children in cases where there is evidence of fathers' family violence (Kaspiew 2005). A history of violence only is a barrier to contact if it is extreme, there is some kind of

corroboration (a criminal conviction, medical records, or evidence from another victim) and there is psychological evidence of post-traumatic stress disorder. And even then, some Family Report evaluators recommend ongoing contact.

This situation threatened to worsen in 2003 when, in alliance with conservative Christian groups and socially conservative politicians, fathers' rights groups were successful in establishing a government inquiry into a *formal* presumption of joint residence after separation (Nicholson, 2004). Fathers' rights groups across Australia share this goal. A 'rebuttable presumption of joint custody' would mean that children would be required to reside with both separated parents for equal periods, living one week with the mother and the next with the father for example, unless there were good reasons to do otherwise.<s>2

The proposed legislative presumption of shared residency threatened to expose women and children to higher levels of violence. Separated parents would be required to prove why shared residency should not occur in cases where an ex-partner has been or continues to be violent, an arrangement at odds with measures being taken in Australia and overseas to work from a presumption of no contact for a perpetrator of violence (Kaye et al., p. 149). Women subject to violence in relationships might be further discouraged from leaving the relationship for fear of their children's safety should joint residency be enforced. Many victims of domestic violence do not report this and would struggle to demonstrate why a perpetrator should not have shared residency of children. And the legal presumption would create further avenues through which perpetrators of domestic violence can threaten and harass ex-partners and children.

The Australian House of Representatives report, tabled in December 2003, recommended against the adoption of a rebuttable presumption of joint residence. It re-affirmed

the principle that parents share responsibility for children before and after separation, promoted parents' joint development of parenting plans, and addressed other issues such as child support and breaches of contact orders. The report recommended that there be "a clear presumption against shared parental responsibility with respect to cases where there is entrenched conflict, family violence, substance abuse or established child abuse, including sexual abuse" (House of Representatives Standing Committee on Family and Community Affairs, 2003). Given that their central goal had been thwarted, fathers' rights groups reacted with great dismay to the committee's report.

However, the Australian Federal Government continued to propose reforms to family law informed by perspectives which the fathers' rights movement shares. As before, these suggested that victims of violence will be required to maintain shared parenting when it is not in the best interests of themselves or their children, because of legislative provisions that privilege formally shared parenting over children's safety. The Federal Government's Discussion Paper, released in November 2004, emphasized the need to encourage equal parenting time as the starting point for parents' decisions about children and heralded a rebuttable legal presumption of "equal shared parental responsibility". The Government announced the formation of a network of Family Relationship Centers to help parents agree on parenting arrangements after separation and in particular to "encourage fathers to maintain a substantial role in their children's lives immediately following a relationship breakdown" (Attorney-General's Department, 2004, p. 2). Counselors and lawyers will be required to raise as an option an arrangement of equal parenting time. After further deliberations within the House of Representatives, The *Family Law Amendment (Shared Parental Responsibility) Act 2006* came into law in July 2006. It affects all child-related cases that reach the stage of litigation after July 2007.

This new family law regime is not quite as regressive as early government reports had heralded. Indeed, it includes some improvements on the existing Australian system. The need to protect children from harm receives greater emphasis as a goal of the *Family Law Act*, the law requires Courts to take prompt action in relation to allegations of violence or abuse, Courts can admit evidence from other courts about violence and abuse, and the Government is developing a new Family Law Violence Strategy, including efforts to improve court processes for cases involving violence.

Nevertheless, the latest legal changes still embody a deeply problematic approach to violence against women. It will be mandatory for separating parents to attend dispute resolution services. Parents now are explicitly ‘required to consult’ with the other parent in making key decisions regarding children, regardless of that parent’s degree of contact with the child, potentially exacerbating the tendency for some non-custodial parents to make a wide range of demands on the custodial parent regarding the child’s upbringing while having no other involvement (NTV, 2005, pp. 38-39). Where parents disagree, processes of dispute resolution will be compulsory and non-participation will attract punitive sanctions. There are exemptions from compulsory mediation in situations where the court is satisfied that there are reasonable grounds to believe there has been or is a risk of family violence (or child abuse). However, it is difficult to screen for violence and abuse, victims’ fears of further violence and of penalties for ‘false’ allegations will discourage disclosure, and mediation assumes equalities in power between participants which may not exist. Thus, in all likelihood many victims of violence will find themselves negotiating on their own behalf, through mediation, with their perpetrators (Field 2006, p. 74). Further legal sanctions will be imposed on resident parents who do not maintain shared parenting responsibilities after separation, while non-resident parents who fail to maintain

contact receive no penalty. Mothers who disobey contact orders often do so to protect their children from ongoing abuse, but they will face additional pressure to agree to parenting plans under duress (DVIRC, 2005, p. 22). Courts will impose penalties when they are satisfied that a false allegation has been knowingly made. Finally, the definition of family violence itself has been amended to emphasize ‘reasonable’ fears regarding personal safety. Critics of such reforms contend that they will worsen the shifts regarding violence already in evidence after the 1995 changes.

The Australian Government’s legal changes echoed many of the key themes of the fathers’ rights movement. Both bodies appear guided by two central, and erroneous, assumptions: that all children see contact with both parents as in their best interests in every case, and that a violent father is better than no father at all. As Eriksson and Hester (p. 791) note for England and Sweden, here ‘virtually any involvement by fathers with their children constitutes *good-enough* fathering’. Such assumptions play themselves out in the pro-contact cultures documented in Australia, the UK (Harrison, 2008), and the USA (Saunders, 2007). While the Australian Government’s advocacy of ‘equal shared parental responsibility’ is not as coercive or dangerous as the fathers’ rights movement’s agenda of mandatory joint residence, both threaten to undermine the primacy of the best interests of the child in determining post-separation arrangements and threaten the safety of women and children.

Discrediting victims

False allegations of abuse

The idea that women routinely make false accusations of child abuse to gain advantage in family law proceedings and to arbitrarily deny their ex-partners’ access to the children is a common

complaint among fathers' rights groups (Kaye & Tolmie, 1998b, pp. 186-187).

However, the Australian research suggests in fact that it is fathers' rights groups who are making the false accusation. First, allegations of child abuse are rare. Residence and contact disputes involving allegations of child abuse represent 5 to 7% of all disputes in children's matters before the Family Court of Australia, according to a study of disputes in 1995-96 (Brown et al., 2001, p. 372). In another study of all cases in 1993 in Western Australia where children's residence or parental contact were in dispute, only 1 to 2% involved allegations of child abuse (Young, 1998, p. 103). In any case, given the prevalence of child abuse in the general population, one should not be surprised that a proportion of family court cases involve allegations of abuse (Young, pp. 102-103).

Child abuse allegations in the context of family law proceedings have been analyzed in four Australian studies. These examinations find that allegations rarely are made for tactical advantage, false allegations are rare, the child abuse often takes place in families where there is also domestic violence, such allegations rarely result in the denial of parental contact, and fathers are at least as likely as mothers to make false allegations. Such findings are corroborated by other international studies. For example, in a landmark Canadian study of 7,600 child maltreatment investigations, Trocme and Bala (2005) found that only 12% of allegations in cases involving disputes over custody and access were false, while most unsubstantiated allegations were made in good faith. Anonymous reporters and non-resident parents (usually fathers) were most likely make intentionally false reports, while resident parents (usually mothers) and children were least likely to do so.

In an examination of fifty South Australian Family Court files in which allegations of child sexual abuse had been made over 1990-92, abuse was confirmed in these cases by the

statutory agency at a higher rate (42%) than for the general population (37%), and this was higher still if the allegation involved sexual abuse by fathers (Hume, 1996). An analysis of the family court records of 200 cases where child abuse allegations had been made over 1995-96 from two of Australia's states found that only 9% of allegations were false, that is, proven to be untrue, arising either from misunderstandings or from fictitious accusations (Brown et al., p. 118). This incidence was the same as in the earlier South Australian study, and no greater than the incidence of such allegations outside family law proceedings as reported by child protection services. Brown et al. report that the substantiated abuse typically was serious and involved multiple forms of harm. The abuse often took place against a background of domestic violence, family violence was more common in these families than in other families known to child protection authorities, and this violence was the most common cause of the relationship breakdown (Brown et al., pp. 119-120).

When allegations of child abuse are investigated by child protection authorities, their reports may indicate that the allegations were substantiated, not substantiated (where there is insufficient information to support either substantiation or an assessment of an untrue accusation), or false (Brown, p. 374). Fathers' rights advocates at times inaccurately have represented all unsubstantiated allegations of child abuse as 'false', thus dishonestly inflating the proportion of all allegations seen to be without substance.

The most recent Australian study examined all resident and contact disputes where allegations of serious child abuse had been made that came to two registries of the family court in one Australian state, over a one-year period (Brown). While Brown et al.'s (2001) early study examined cases selected from all families with abuse allegations and found a rate of substantiation of 22% of allegations, the second study found a substantiation rate of 52%.

Mothers notify the family courts of concerns regarding child abuse at over the twice the rate of fathers, according to the recent Australian study, but these are four times as likely to be substantiated. Of mothers' allegations, 63% are substantiated, compared to 13% of those made by fathers (Brown, pp. 372-375). Allegations were assessed as false in 11 out of 147 families, and fathers and mothers were equally likely to have made these. Domestic violence was alleged in 40% of the families studied, and when it was alleged child abuse of all kinds was more likely to be substantiated.

When fathers are subject to allegations of abuse, their chances of being denied contact with children are remote even if these allegations are substantiated, and the numbers of parents falsely accused of child abuse are tiny compared to the numbers of children who are being abused and about whom the Family Court never hears (Young, p. 108).

Fathers' rights advocates further contend that women's allegations of abuse are a *successful* weapon in family law proceedings. Again, the evidence suggests otherwise. Examination of cases in Western Australia found that the alleged abuser's contact with the child(ren) was suspended in only a handful of cases (Young, pp. 106-107). In practice, the Family Court tries to determine whether the abuse took place using a far higher standard of proof than the formal, civil standard of a 'balance of probabilities', one that is close to the criminal standard of 'beyond a reasonable doubt'. As a result, it usually finds that no abuse took place and therefore there is not the 'unacceptable risk of abuse' that would compel the Court to avoid granting the child's residence or contact with the alleged abuser (Young, pp. 107-108). In a more recent study, children going through the West Australian Family Court expressed frustration that their disclosures of abuse and their preferences for no contact with abusive fathers were minimized and rejected as maternal influence (Hay). Qualitative research among single mothers

documents that of women who left violent relationships and then used the Family Court system, none were able to prevent their children's continuing exposure to abuse through court-ordered contact (McInnes, 2002).

The belief that most if not all allegations of child abuse in circumstances of separation and divorce are false is widely held (Brown et al., p. 117; Jenkins, 2003). This reflects not only the efforts of fathers' rights groups but also longstanding cultural habits of mother-blaming, academic and popular stereotypes of the falsely accusing mother, and the judicial system's history of treating women's allegations of sexual violence with suspicion (Humphreys, 1999, pp. 35-45). In the context of divorce the rules for mothers seem to change, such that "protectiveness is construed as paranoia, and reporting abuse is treated as vindictiveness" (Humphreys, p. 39).

False allegations of domestic violence and the misuse of protection orders.

Fathers' rights groups also assert that women routinely fabricate allegations of domestic violence to gain advantage in family law cases and use protection orders to remove men from their homes or deny contact with children. Rather than having any real experience or fear of violence, women are said to be inspired by vindictive and retaliatory motives (Lone Fathers' Association 2004, pp. 11, 38). Fathers' rights groups' ideological influence is evident in the fact that, from a recent state-based telephone survey in Australia, 46% of the adult population in Victoria agreed with the statement that "women going through custody battles often make up claims of domestic violence to improve their case" (Taylor & Mouzos 2006, p. 24).

Such claims also have permeated the Australian family law and justice systems, influencing professionals' attitudes and their responses to domestic violence. For example, in a 1999 survey of magistrates in New South Wales, 90% agreed that orders were used by applicants

(often on the basis of advice from a solicitor) as a tactic in family court proceedings (Judicial Commission of New South Wales, 1999). A more recent survey found that some family law solicitors share this perception of women as ‘access bitches’ who vindictively deny contact (Melville & Hunter, 2001, p. 127).

There is no doubt that family court proceedings often are accompanied by allegations of domestic violence. This reflects the fact that domestic violence often escalates at the time of separation. US data demonstrate that separated women are at elevated risk of violence by men, whether physical, sexual, or lethal, relative to women in intact unions (Brownridge 2006), and women are at risk of increasingly severe violence when separating from violent partners (Riggs *et al.* 2000).

Examination of family court files and victims’ experience finds that the fathers’ rights claim is unsubstantiated if not false. In a study of 176 files in which children’s matters were contested, while 54% included evidence of domestic violence Apprehended Violence Orders had not been obtained in over a third of these (Melville & Hunter, pp. 127-128). This suggests that women going through family court proceedings and living with domestic violence do not routinely take out protection orders in response. Australian studies further document that women are reluctant to take out orders and often only do so as a last resort after being subjected to repeated and serious victimization (Melville & Hunter, p. 128). Among young women aged 18 to 23, women are more likely to seek legal protection if they have experienced more severe levels of violence, have been injured, and have children (Young *et al.*, 2000, p. 3). Earlier research into the use of violence orders found that the majority of complainants had experienced physical violence on more than one occasion (Trimboli & Bonney, 1997). Similarly, in other countries such as New Zealand, one finds both claims that women make false, malicious, and strategically

motivated allegations of violence and, again, evidence that such cases are very rare (Davis, 2004, p. 304).

The Australian evidence is that protection orders provide an effective means of reducing women's vulnerability to violence. An early study in New South Wales found that the vast majority of complainants experienced a reduction in violence and abuse in the six months after the order was served on the defendant, and over 90% reported that the order had produced benefits such as reduced contact with the defendant and increased personal safety and comfort (Trimboli & Bonney). Research among young women aged 18 to 23 found that the severity of intimate partner violence was reduced after legal protection, although this benefit was not as marked unless they sought help from the courts as well as the police (Young et al., p. 5).

Protecting perpetrators

A third cluster of ways in which the fathers' rights movement in Australia has had an impact on violence against women is in its efforts to modify legal and institutional responses to the victims and perpetrators of violence. In its efforts to change laws and policies regarding family law and related matters, the fathers' rights movement often has argued that these are excessively and unjustly biased towards the allegedly female victims of violence and against the alleged male perpetrators. The movement has sought to wind back the protections afforded to such fictitious 'victims' and to institute legal penalties for their malicious behavior. The Lone Fathers' Association (LFA) and other groups argue that claims of violence or abuse should be made on oath, they should require police or hospital records, and people making allegations which are not then substantiated, and those who have helped them, should be subject to criminal prosecution (Lone Fathers' Association; DOTA 2005).

Fathers' rights groups also attempt to undermine the ways in which domestic violence is treated as criminal behavior and its perpetrators are subject to criminal sanction. The LFA proposes that the Duluth-informed practice of the state Family Violence Intervention Program be replaced by a 'Family Systems Model' that has the goal of keeping the family intact (LFA, p. 27). Fathers' rights organizations criticize the "sexist ideology" of existing perpetrator programs and call for the greater use of mediation and counseling (DOTA, 2005; LFA, pp. 27-45). This last recommendation is symptomatic of the view among some fathers' rights groups that domestic violence is best understood as "marital discord" and the responsibility of both parties (Kaye & Tolmie, 1998a, pp. 55-56), rather than a systematic exercise in power and control.

Such changes would represent a profound erosion of the rights and protections available to the victims of violence and the ease with which they and their advocates can seek justice. This agenda betrays the fact that the concern for *male* victims of domestic violence often professed by fathers' rights groups is rhetorical rather than real. While such fathers' rights groups purport to advocate on behalf of male victims of domestic violence, they seek to undermine the policies and services that would protect and gain justice for these same men.

Like actual male perpetrators of violence, many fathers' rights groups minimize and deny the extent of this violence, blame the victim, and explain the violence as a mutual or reciprocal process (Hearn, 1996, p. 105). This tendency is evident also in expressions of sympathy or justification for men who use violence against women and children in the context of family law proceedings. Men's murders of their ex-wives and children and subsequent suicides have been justified by some spokesmen for men's rights groups as understandable responses to the "raw deal" men get before the Family Court (Maddison, 1999, p. 39). When fathers' rights

advocates acknowledge men's violence against women and children, typically they ignore its impact on its targets and blame the violence on factors outside the men who perpetrate it: the Family Court, the Family Law Act, or the residential parent. Thus, "[i]n an ironic twist, male violence is used by these groups to demonstrate how victimized men are by the family law system" (Kaye & Tolmie, 1998a, pp. 57-58).

Undermining education and advocacy

Finally, the fathers' rights movement has attempted to undermine media and community campaigns focused on men's violence against women, and to obstruct and harass community sector and women's organizations which respond to the victims of violence. Fathers' rights groups attack what they describe as the 'domestic violence industry', "a massive industry funded to the tune of billions of dollars with a vested interest in exaggerating the extent of domestic violence and using it as an anti-father propaganda tool" (DOTA). They call for the defunding and abolition of this "hysterical, extremist and anti-male anti-father domestic violence industry". Media and community campaigns focused on men's violence against women are another target of the fathers' rights movement's wrath. Activists routinely pen letters to newspapers, local politicians and bureaucrats to complain of the 'misandry' (man-hating) and 'lies' in these campaigns, and lodge formal complaints of sex discrimination with human rights and advertising standards bodies.

In countering feminist efforts to encourage community and professional awareness of men's violence against women, fathers' rights groups also mount their own media campaigns. It is an article of faith among these and other anti-feminist men's groups that domestic violence is gender-equal, and this claim has become central to their campaigns against existing efforts to

address violence against women (Kaye & Tolmie, 1998a, pp. 55-56). The fathers' rights movement finds scholarly support for this claim in 'family violence' studies which use quantitative measurement instruments focused on violent acts. Instruments such as the Conflict Tactics Scale focus on 'counting the blows'. They are poorly equipped to illuminate the extent, dynamics, impact, or context of interpersonal violence, and unable to distinguish between distinct patterns of violence in heterosexual couples (Johnson, 2006). In fact, because of the narrow ways in which they define and measure violence, acts-based approaches tend to *produce* the claims of gender 'symmetry' and 'equivalence' they purport to test (Dobash & Dobash, 2004, p. 332). However, data from other approaches shows clear asymmetries in men's and women's uses of and subjection to intimate partner violence (Belknap & Melton, 2005). Nevertheless, fathers' rights advocates continue to draw uncritically and exclusively on CTS-based studies, and their efforts appear to be having some impact on community attitudes. A recent Australian survey found a significant increase over the last decade in the proportion agreeing that domestic violence is perpetrated by men and women equally, from 9% in 1995 to 20% in 2006 (Taylor & Mouzos, p. 24).

Members of fathers' rights groups sometimes act as direct advocates for perpetrators or alleged perpetrators of violence against women. For example, one group distributes pamphlets outside courts for 'victims of a false protection order', giving no attention to how to respond either to 'true' perpetrators of violence or to the safety of family members. Groups such as the Men's Rights Agency run training sessions for men who wish to represent themselves in family law proceedings, and given the perspectives of such groups these sessions are unlikely to prioritize women's and children's safety or take allegations of violence seriously. Members of

some groups have used abusive strategies themselves, such as stalking and harassing divorced mothers by staging demonstrations outside their houses (Flood, 2004, p. 265).

Fathers' rights groups also have engaged in the harassment of community sector and women's organizations which respond to the victims of violence. The Lone Fathers' Association supported a man who took a case to the Human Rights and Equal Opportunity Commission (HREOC) alleging sex discrimination by the Domestic Violence Resource Centre. HREOC dismissed the allegations and the LFA's enthusiasm was dampened when a local newspaper revealed that the complainant had criminal convictions for assault and weapons offences (Matheson, 1996; Young, 1996). In the longest-running case of this kind, a Canberra man tried for 15 years to win a sex discrimination case against the Domestic Violence Crisis Service, again with the support of the LFA. Such campaigns are one aspect of the fathers' rights movement's wider attack on women's services and women-oriented policy bodies (Flood, 2003, p. 42).

CONCLUSION

The efforts of the fathers' rights movement in Australian family law are already putting women, children and indeed men at greater risk of violence and abuse. The fathers' rights movement has exacerbated our culture's systematic silencing and blaming of victims of violence and stymied community and government efforts to respond effectively to the victims and perpetrators of violence.

These efforts have taken place in the context of a wider dilution of feminist policy-making and political influence in Australia. As in the US, reliance on government funding and the rise of neo-conservative, 'economic rationalist' models of governance has watered down the feminist orientation of domestic violence services. In government policy-making, feminist and

politicized frameworks for understanding violence against women have given way to some degree to more welfare-oriented and therapeutic models (McDonald, 2005; Phillips, 2006). More generally, over 11 years of national government by the socially conservative Liberal Party from 1996 to 2007, Australia has witnessed the systematic winding back of agencies and policies aimed at women's equality (Phillips, pp. 193-4).

Several developments in the first few years of the new century signaled an increase in the impetus and impact of the fathers' rights movement in Australia. Two major coalitions of fathers' rights groups formed in 2002 and 2003, the Shared Parenting Council of Australia and the Fatherhood Foundation. A couple of groups have adopted the tactics of Greenpeace-style direct action modeled by Fathers 4 Justice in the UK. Key activists such as the national President of the Lone Fathers Association have had contact with powerful political figures of the kind only dreamed about by women's groups, men's complaints regarding family law are one of the most common kinds of complaint received by local politicians, and prominent politicians have participated in fathers' rights events such as the 2003 forum at Parliament House dedicated to "Turning the Tide of Fatherlessness in Australia". The growing political strength of the fathers' rights movement is evident above all in its establishment of a series of government inquiries into family law and child support, although its policy agendas continue to be thwarted or only half-adopted.

The fathers' rights movement in Australia will continue to pursue 'equality with a vengeance' (Rhoades, 2000, p. 155). It prioritizes formal principles of equality over positive parenting and the well-being of women and children, conflates children's welfare with parental equality and ignores actual caregiving divisions of labor. Its advocates will persist in trying to re-establish paternal authority and fathers' decision-making related to their children's and ex-

partners' lives (Cornell, 1998, pp. 185-187; Stacey, 1998, pp. 56-57). The fathers' rights movement will continue to seek an equality concerned with fathers' 'rights' and status rather than the actual care of children (Rhoades, p. 156). Fathers' rights groups will persist in ignoring the real obstacles to shared parenting both in couple families and after separation or divorce (Flood, 2003, pp. 50-64). And their efforts will continue to be bolstered by wider, neo-conservative panics over the status of fatherhood and the authority of patriarchy.

At the same time, the fathers' rights movement is opposed by a wide range of social actors, including women's and separated mothers' groups, services for victims or perpetrators, family lawyers, community sector and service provider organizations, scholars, and others. In November 2007, there was a change in national government in Australia for the first time in over a decade. Fathers' rights agenda will find less support under the new Labor government given that it is less socially conservative than its predecessor, but it remains to be seen whether it will systematically defend and extend feminist achievements regarding violence against women.

The new politics of fatherlessness has not yet been entirely captured by the fathers' rights movement. The focus on fathers of debates over family politics and family values has been a source of ideological capital for the fathers' rights movement, but it also has the potential to foster men's positive involvement in parenting and families. The belief that it is desirable for men to play an active role in parenting is shared across the fathers' rights movement and feminism (Cornell, pp. 185-186), and early second-wave feminism imagined 'creating the material conditions in which opportunities would exist for men and women to care equally' (Williams, p. 80). In Australia, key resources for realizing the progressive potential of contemporary fatherhood politics include the widespread imagery of the nurturing father, community intolerance for violence against women, growing policy interest in addressing

divisions of labor in child care and domestic work, and men's own investments in positive parenting. However, thwarting the fathers' rights movement's backlash requires that we directly confront the movement's agenda, disseminate critiques of its false accusations, and respond in constructive and accountable ways to the fathers (and mothers) undergoing separation and divorce (Flood, 2004, pp. 274-278).

NOTES

1. Cornell (1998) and some other authors refer to the 'fathers' movement'. Here the phrase 'fathers' *rights* movement' is used to distinguish this from other advocates and organisations promoting fathers' involvement in families which do not share the agendas and worldviews of fathers' rights groups. Nevertheless, fathers' rights perspectives do have a wide currency across the political spectrum.
2. The phrase 'joint custody' often has been used in the US to signal that both parents have legal responsibility for the child and should be involved in the child's upbringing after separation. In that sense, the *Family Law Act* in Australia usually grants this automatically, but 'joint custody' commonly refers to joint *physical* residence.

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